IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 340 of 1982

For Approval and Signature :
HONOURABLE **MS. JUSTICE R.M.DOSHIT**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

==========

PATEL KACHARABHAI ARJANBHAI - Appellant(s)

Versus

JADEJA AJITSINH PRABHATSINH - Defendant(s)

==========

Appearance :
MR SURESH M SHAH for Appellant
MR JR NANAVATI Sr Advocate with Mr PV HATHI for Defendant

==========

CORAM : HONOURABLE MS. JUSTICE R.M. DOSHIT

Date : 11/06/2007

ORAL JUDGMENT

This Appeal has been preferred by the plaintiff in Regular Civil Suit No. 111 of 1976 under Section 100 CPC against the judgment and order dated 14th

September, 1982 passed by the learned Assistant Judge, Gondal in Regular Civil Appeal No. 98 of 1981.

The Appeal is admitted on the following substantial questions of law :-

[1] ***Whether the suit of the appellant is barred by the provisions of section 62 of the Saurashtra Land Reforms Act ?***

[2] ***Whether the compromise entered into between Naran Kala and the respondent and the order passed thereon on the tenancy proceedings under the Land Reforms Act are binding to the appellant ?***

[3] ***Whether on death of Kala Lakha, Naran Kala became the sole tenant of the lands ?***

The facts leading to the above referred Civil suit are undisputed. The defendant was the *Girasdar* and owned agricultural land at village Shapur, Taluka-Kotdasangani, District-Rajkot. Under the land reforms, the Girasdars' giras was abolished and the lands were given over to the tenants in occupation. One of the tenants Kala Lakha was given over some 203 acres of land including the suit land Survey No. 285, admeasuring 4 acres-21 gunthas. The occupancy certificate [*Exh.60*] was issued in favour of the said Kala Lakha. On introduction of the Saurashtra Land Reforms Act, 1951 [hereinafter

referred to as, "***the Act***"] on 1st September, 1951, the defendant-Girasdar filed application before the Mahalkari to allow him to retain 120 acres of land as gharkhed land [*for personal cultivation*]. The said application was processed by the Mahalkari. The tenant-Kala Lakha was represented by his son, one Naran Kala. After a round of litigation, by order dated 31st August, 1975 made by the Mahalkari, Kotdasangani, the defendant was allowed to retain, *inter alia,* 4 acres of land from the lands allotted to the said Kala Lakha. Before the Mahalkari, the said Naran Kala agreed that the suit land be given over to the defendant-Girasdar. In the meantime, the lands of the said Kala Lakha were divided amongst his heirs – the sons and the grandsons. The suit land had come to the share of the plaintiff-the grandson of the said Kala Lakha and the nephew of the said Naran Kala. Before the Mahalkari, the said Naran Kala agreed that the suit land be given over to the defendant-Girasdar. However, in absence of the plaintiff, the Mahalkari did not accept the proposal made by the said Naran Kala, instead, directed the said Naran Kala to give away part of his land.

Feeling aggrieved, the said Naran Kala preferred Appeal No. 2 of 1975-76 before the Deputy Collector, Rajkot. The Deputy Collector, by his order dated 30th April, 1976 allowed the said Appeal. According to the Deputy Collector, the terms agreed upon by the Naran Kala and the defendant ought to have been accepted. The order was made accordingly. Feeling aggrieved, the plaintiff preferred Revision Application before the Gujarat Revenue Tribunal. The said Revision came to be dismissed by the judgment and order dated 24th February, 1977.

Feeling aggrieved, the plaintiff instituted above referred Regular Civil Suit No. 111 of 1976 in the Court of learned Civil Judge [SD], Gondal. According to the plaintiff, he was not a party to any of the revenue proceedings and the parcel of land which had come to his share was given away to the defendant-Girasdar without impleading the plaintiff in the proceeding and without giving him opportunity of hearing. The suit was contested, *inter alia*, on the ground that the Civil Court had no *jurisdiction* to entertain the suit. The learned Civil Judge, by the judgment and decree passed on 5th October, 1981,

dismissed the Appeal, *inter alia*, on the ground of want of *jurisdiction*. Feeling aggrieved, the plaintiff preferred the above referred Regular Civil Appeal No. 98 of 1981 in the Court of District Judge, Gondal. The lower appellate Court by the *impugned* judgment and order confirmed the judgment and decree passed by the learned Civil Judge. Therefore, the present Appeal.

Mr. Shah has submitted that the orders made by the revenue authorities were manifestly wrong. The Civil Court, therefore, ought to have exercised its *jurisdiction* and set-aside the order made by the revenue authorities against the plaintiff. He has submitted that admittedly the plaintiff was not a party before the revenue authorities. Before the application made by the defendant-Girasdar was heard, the lands of the aforesaid Kala Lakha was divided amongst his sons and grandsons. The suit land had come to the share of the plaintiff. Corresponding entry was made in the revenue record also. Thus, the order for handing over possession of the suit land could not have been made in absence of the plaintiff.

The Appeal is contested by Mr. Nanavati. Mr.

Nanavati has supported the judgments of the lower Courts. He has submitted that Lakha Kala was the tenant in the giras lands of the defendant. The Act allowed the defendant to retain some 120 acres of land for personal cultivation. It was this right which had been recognized by the orders of the revenue authorities. The plaintiff, therefore, is entitled to recover possession of the suit land from the defendant. He has supported the finding of lack of jurisdiction recorded by the Courts below. He has relied upon Section 62 of the Act and has submitted that the jurisdiction of the Civil Court is absolutely barred and the Courts below have rightly dismissed the suit.

The facts stated hereinabove are not disputed i.e., the lands of the deceased Lakha Kala were divided amongst his heirs – sons and grandsons, as averred and that the suit land had come to the share of the plaintiff.

Section 62 of the Act expressly bars the *jurisdiction* of the Civil Court to question any order of the Mamlatdar, the Collector or Tribunal made under the Act. Undoubtedly, what was challenged

before the Civil Court was the order of the Revenue Tribunal made under the Act. I am, therefore, of the opinion that the Courts below are right in holding that the Civil Court had no *jurisdiction* to entertain and to try the suit. As I am of the opinion that the Civil Court had no *jurisdiction* to entertain and decide the suit, the other issues involved in this Appeal need not be answered.

For the aforesaid reason, the Appeal is dismissed. The parties shall bear their own their own cost.

Mr. Shah has requested that this Order be stayed and *interim* order made pending the Appeal be continued for a further period. The request is just and reasonable. It is, therefore, directed that there shall be stay of this Order and *interim* order made pending the Appeal be continued till 1st August, 2007.

{Ms. R.M Doshit, J.}

*Prakash**